XII-189 (Jail) C J.P.R.-9-94

CF0000062602

(2)

APPEAL OF PRISONER

Division Bench (Criminal)

No अन्दी क्रमांक 1594/99 Name रामसहाय

Father's name जगमोहन, उम्र 30 साल कोरबा

Residence ग्राम व पो० मोहदीपाली थाना-मोहतरा डाली जि०-बिलासपुर (म०प्र०) Age 35 वर्ष

Sentenced to आ० का० 302 व 506 भाग 2 on 15.1.99

Under Section भा० दं० सं० की धारा 302 व 506 भाग 2 के अपराध में आजीवन कारावास। by द्वि-अति० सत्र न्या० एवं सह सत्र न्या० बिलासपुर (म०प्र०)

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the Prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not obliged to give a hearing to my legal practitioner who should appear.

1 Date of Application for copy of Judgement हाँ (संलग्न)

2 Date on which copy received N

3 Date on which Appeal sent ?

4 Whether the prisoner wishes to be represented or not. हाँ

No अन्दी क्रमांक 1594/99 Name रामसहाय पि० जगमोहन मोहरीपाली

Confined in सेन्ट्रल Jail जिला सतपुर (मध्य प्रदेश)

No. _____ Dated 30-01-1999

Forwarded to the रजिस्ट्रार महोदय उच्च न्यायालय जबलपुर (मध्य प्रदेश)

to gether with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

सहायक कोण अधिकारी,
कृते, जेल अधीक्षक,
बिलासपुर (म० प्र०)

SUPERINTENDENT,
CIRCLE JAIL BILASPUR (M.P.)
Jail

Date of receipt in _____ Office with no letter

Date of receipt of record to accompany the _____

Memo of Appeal to the Appellate court _____

No _____ Dated _____ 199 _____

Forwarded to the

Date of receipt in Appellate court _____

(P. T. O.)

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(22)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक C.A.No. 328/99 **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench:

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. V.K. Shrivastava, JJ.

15-9-2006

Mrs. Hamida Siddique, counsel for the appellant.

Mr. D.K. Gwalre, Deputy Govt. Advocate for the State/respondent.

Oral order dictated on *Dais.*

Per L.C. Bhadoo, J: -

This appeal is directed against the judgment of conviction and order of sentence dated 15th January, 1999, passed by the 1st Additional Sessions Judge, Bilaspur in Sessions Trial No.110/98 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C. for committing the murder of Ghurandas, sentenced him to undergo imprisonment for life and to pay a fine of Rs.100/-, in default of payment of fine to further undergo R.I. for one month. However, co-accused Phoolsai was acquitted and third accused Dhansai died during trial, therefore, case against him was abated.

Case of the prosecution, in brief, is that there was a dispute between accused Dhansai (since deceased) and Ghurandas in connection with a patch of land ad measuring 5 decimal. At the request of Deceased Ghurandas meeting of Panchayat was convened on 14-11-1997 by Sarpanch Javal (PW-7), in the said Panchayat, it was decided that crop should be distributed in equal share amongst Dhansai & Deceased Ghurandas. The said patch of land was in possession of Dhansai. In the intervening night of 21st & 22nd November, 1997, at about 11 p.m., when Ghurandas and his wife Phoolbai (PW-4) were sleeping with their two

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मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

daughters, accused Somar Sai came with a chopper (Gandasa) and attacked Ghurandas with that Gandasa on his neck, as a result of which, he sustained fatal injuries and died instantaneously. The crime was witnessed by Phoolbai (PW-4), wife of the deceased, she started raising screams. Hearing the screams, neighbourer Suresh Kumar (PW-11) came out of his house, to whom Phool Bai (PW-4) informed about the incident, in turn, he informed Panchamdas (PW-5), brother of the deceased about the incident, who in turn gave merg intimation Ex.P-1 in Police Station: Pasan at 8 a.m. on 22-11-1997. He also lodged first information report Ex.P-2 in the said Police Station.

The Station House Officer after registering Crime No.67/97 for commission of offence under Section 302 of the I.P.C., left for scene of occurrence and after giving notice Ex.P-3 to the Panchas, prepared the Panchnama (Ex.P-4) of the dead body of Ghurandas. Accused Somar Sai while in police custody gave memorandum Ex.P-5 regarding the chopper and in pursuance of that, he got recovered the said chopper from the residence of Phoolsai under Ex.P-6. Clothes of the accused i.e. bush shirt & Lungi were taken into possession under Ex.P-7 which were stained with blood. The Investigating Officer took into possession plain soil and blood stained soil from the place of occurrence under Ex.P-8. The compromise deed Ex.P-14, which was entered into between Dhansai & deceased Ghurandas in front of the Panchayat was taken into possession under Ex.P-9. One map and stamp paper were also taken into possession under Ex.P-10. Revenue records Exs.P-11 & P-12 regarding the disputed land were also taken into possession. The site plan Ex.P-13 of the place of occurrence was prepared.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The dead body of deceased Ghurandas was sent for post-mortem examination to Primary Health Centre, Pasan under Ex.P-20 where Dr. K.S. Pendro conducted post-mortem on the dead body of the deceased and prepared post-mortem report Ex.P-15 in which he opined that cause of death was syncope due to haemorrhage as a result of incised wounds. The doctor found following injuries: -

(i) Incised wound in size of 4 ½" x 2" x whole muscular and mucus layer of cheek cut at from angle of right mouth, muscles, vessels and nerve cut at the parts of injury transversed in direction,

(ii) Incised wound in the size of 7½" x 4" x up to middle of 4th cervical vertebrae of right side. It extended from left side below the angle mandible to the posterior angle of neck right side. Skin Platysma, muscles, vessels, carotid, superior venaceva nerve, oesophagus, mandible at center. Hyoid bones were cut through out side of wound verebral column seen and clotted blood was present in muscles, vessels, trachea and oesophagus transversed in direction, and sufficient to cause of death,

(iii) Incised wound in the size of 4" x 1½" x joined with injury No.(ii), transversed, upper part of thyroid, epiglottis was cut and clotted blood was found.

All these injuries were caused by sharp cutting object and same were ante-mortem in nature.

The recovered articles were sent for chemical examination to the Forensic Science Laboratory, Sagar, from where report Ex.-P/29 was received and as per the report, blood was found on the chopper, weapon of offence.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Katghora, who in turn, committed the case to the Sessions Judge, Bilaspur from where learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish the charge against the accused persons examined 12 witnesses. On the other hand, statements of the accused persons were recorded under Section 313 of the Cr.P.C.. Accused Somar Sai stated that he is innocent and has been falsely implicated in the crimes. The trial Court convicted the accused/appellant as mentioned in para-1 of this judgment whereas, acquitted co-accused Phool Sai.

We have heard learned counsel for the parties.

The homicidal death of deceased Ghurandas has not been disputed by learned counsel for the accused/appellant. Apart from that, from the evidence of PW-8 Dr. K.S. Pendro, who has stated that he conducted the postmortem on 22-1-97 on the dead body of the deceased and he found that there were 3 incised wounds, wind pipe was found cut, clotted blood was present in the wind pipe, food pipe was also found cut and cause of death was shock and haemorrhage as a result of incised wounds and it was homicidal in nature. Therefore, in view of the above evidence, it is established that the death of the deceased was homicidal in nature.

As far as involvement of the accused/appellant in commission of crime is concerned, the prosecution in order to establish charge against the accused adduced following evidence: -

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

(1) There was animosity between accused Dhansai and deceased Ghurandas in connection with 5 decimal land, therefore, there was motive behind the commissions of crime,

(2) Wife of the deceased PW-4 Phool Bai witnessed accused Somar Sai while attacking Ghurandas with a chopper,

(3) Weapon of offence i.e. chopper was recovered at the instance of the accused,

(4) PW-11 Suresh Kumar saw the accused running away with a chopper in his hand from the house of the deceased,

(5) On 20th November 1997 deceased Ghurandas informed the village Kotwar PW-3 Phaguva Das that Dhansai has brought some persons in the village to commit his murder, therefore, entry of those persons be made in the register.

As far as first point is concerned, village Sarpanch PW-7 Javal has stated that there was dispute between Dhansai and Ghurandas regarding agricultural land. Bhagwant Singh gave his land to Ghurandas after appointing him as power of attorney holder. On 14-11-97, at the request of Ghurandas a Panchayat was convened, he was present in the Panchayat. Panchayat got the matter compromised between deceased Ghurandas and Dhansai to the effect that crop shall be distributed amongst them in equal share. The compromise deed (Ex.-P/14) was executed and same was taken into possession by the police during the investigation under Ex.-P/9. This witness has not been cross-examined on this aspect. Ex.-P/9 shows that the document Ex.-P/14 was taken into possession from this witness namely Javal. Perusal of Ex.-P/14 shows that compromise was entered into between the accused and the deceased and same was signed by Panchas, PW-7 Javal, Sarpanch and PW-3 Phaguva Das, Kotwar. Revenue record

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Ex.-P/12 {B.(1) Kishtbandi Khatoni} and site plan of the said land Ex.-P/11 have also been tendered into evidence which show that the land was in the name of Bhagwant Singh. PW-4 Phool Bai, wife of the deceased, has also categorically stated that there was dispute between her husband and Dhansai regarding the land and Dhansai used to threaten her husband. Therefore, it is established that there was dispute between Dhansai and deceased Ghurandas, as the land was in possession of Dhansai. Ghurandas was claiming the possession as well as share in the crop, that was not liked by Dhansai, therefore, there was clear and strong motive behind the crime in question.

As far as second point is concerned, PW-4 Phool Bai has categorically stated that in the fateful night she along with her husband and two daughters were sleeping in their house, in the mid night, accused Somar Sai committed murder of her husband by attacking with chopper (Gandasa), as a result of which her husband received injuries on the neck and cheek, on which she raised screams that her husband has been murdered, on which neighbourer Suresh came, Somar Sai was wearing Lungi and Kurta, Suresh and others informed her brother-in-law Panoham and Naindas, they went and lodged the report.

Learned counsel for the accused/appellant argued that this witness has not stated in her evidence that as to how she was knowing the name of the accused, therefore, regarding identity of the accused, the prosecution has not been able to adduce clear cut evidence.

But, we are not convinced with the argument advanced by learned counsel for the accused/appellant for the reason that when this witness has categorically stated in examination-in-chief that Somar Sai was the person

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 7 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

who attacked her husband, it was the duty of the defence to cross-examine her on that aspect that how she was knowing the name of Somar Sai or she was not knowing the name of Somar Sai at all. Apart from that, in the police statement (Ex.-D/3), she has categorically stated that Somar Sai attacked her husband with a chopper and the First Information Report given by Pancham Das, brother-in-law of this witness, on the information given by this witness, also discloses the fact that Somar Sai was the author of attack with a chopper on the deceased. Therefore, we do not find any infirmity in the evidence of this witness, her presence in the house in the mid night cannot be doubted, being a wife, her presence in the house in the mid night was but natural. In the cross-examination of this witness, defence has not been able to elicit any circumstance which makes evidence of this witness untrustworthy or unreliable. The evidence of this witness inspire full confidence of the Court that she witnessed the accused while attacking her husband with a chopper.

As far as third point is concerned, Investigating Officer, Babu Jan Khan (PW-12) has stated that while in the police custody, accused Somar Sai, on 23-11-97, gave memorandum (Ex.-P/5) that he has kept chopper, weapon of offence, in the house of co-accused Phool Sai and he can get recovered the same. Based on that, the accused got recovered chopper under Ex.-P/6. The evidence of this witness has been corroborated by the evidence of PW-11 Suresh, who has stated that memorandum Ex.-P/5 was given by Somar Sai which bears his signatures also and thereafter, in his presence, the accused brought chopper from the house of Phool Sai and same was taken into possession under Ex.-P/6. In para-15 of his cross-examination, he has stated that he came to know about the name of accused Somar Sai only after disclosing by the police and prior to that, he

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —8—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

was not knowing the accused by name. The statement of this witness under Section 161 of the Cr.P.C. was recorded on 22-11-97 in which he gave a statement that he saw accused Somar Sai running away carrying weapon of offence in his hand. PW-6 Purushottam Lal has turned hostile and he has not supported the case of the prosecution. Therefore, from evidence of Investigating Officer PW-12 and evidence of witness PW-11 Suresh, it is established that chopper was recovered at the instance of accused and same was found stained with blood as per F.S.L. report Ex.-P/29.

As far as fourth point is concerned, PW-11 Suresh Kumar has stated that on hearing the screams of Phool Bai, he came out of the house and saw that one person wearing lungi and shirt carrying an iron weapon in his hand was going out of the house of the deceased. But, definitely he cannot say that which kind of weapon was there. After identifying in the Court, this witness has stated that Somar Sai was the person who came out from the house of the deceased. Therefore, there is no reason before us to disbelieve the evidence of this witness, being a neighbourer, he came hearing the screams of the wife of the deceased and he saw the accused running away from the house. So nothing is unnatural in the evidence of this witness.

As far as fifth point is concerned, the prosecution has not been able to establish this circumstance for the reason that the register in which Kotwar PW-3 Phaguva Das made entry about presence of Somar Sai has not been produced. Moreover, in his statement (Ex.-D/2) under Section 161 of the Cr.P.C., he has not stated that the deceased came and informed him that Dhansai has brought persons in his house in order to commit his murder, he should make entry of those persons in the register. There

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appears to be improvement in the evidence of this witness and relevant supportive document i.e. register has not been produced, therefore, his evidence is not worth reliance.

Therefore, based on the evidence of PW-4 Phool Bai, wife of the deceased, who witnessed the accused attacking the deceased with a chopper, same was recovered at the instance of the accused under Ex.-P/6 and was found stained with blood as per the F.S.L. report (Ex.-P/29), PW-8 Dr. K.S. Pendro also examined the said chopper, found same stained with blood and has stated that it was possible to cause injuries by this chopper which were found on the body of the deceased. Witness Suresh also saw the accused running away from the house of the deceased just after the incident. Therefore, we are of the considered opinion that in view of the above clinching evidence, involvement of the accused/appellant in crime in question is established and there is no illegality and infirmity in the finding of the trial Court convicting the accused/appellant for commission of offence under Section 302 of the I.P.C.

In the result, the appeal fails and same is dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
V.K. Shrivatava
Judge

Barve

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